

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

BASF AGRO B.V., ARNHEM (NL),
WÄDENSWIL BRANCH, BAYER S.A.S.,
and Merial Limited,

Plaintiffs,

v.

CHEMINOVA, INC.,

Defendant.

C.A. No. 10-cv-274-WO-WWD

MOTION TO FILE DOCUMENTS UNDER SEAL

Plaintiffs BASF AGRO B.V., ARNHEM(NL), WÄDENSWIL BRANCH, BAYER S.A.S., and Merial Limited (hereinafter “Plaintiffs”) hereby move the Court to file under seal the following documents, submitted herewith: (i) Memorandum of Law in Support of Plaintiffs’ Motion to Dismiss All Pending Claims, Defenses and Counterclaims Relating to the ‘848 Patent Pursuant to Fed. R. Civ. P. 41(a)(2); and (ii) Exhibits B, C, D, and E filed therewith.

In support of this Motion, Plaintiffs state as follows:

Plaintiffs entered into a Stipulated Protective Order (“the Protective Order”) entered by the Court on August 27, 2010. [D.I. 40]. Paragraph II.B.1 of the Protective Order defines “confidential information” as “sensitive (1) research, development, or technical information that is not publicly available and provides a technical or

commercial advantage to its possessor; or (2) business, financial, or commercial information that is not publicly available and provides a commercial advantage to its possessor.” Paragraph II.B.2 of the Protective Order defines “highly confidential information” as “includ[ing], without limitation, any non-public information concerning the design, development and manufacturing of products, research and development, product analysis, sales and marketing, business relationships, including customers, personnel information, and patents and patent applications.” Paragraphs VIII.A.1 to VIII.A.3 of the Protective Order state that a party must file documents under seal with the Court if it is necessary to submit confidential or highly confidential material.

The Memorandum of Law in Support of Plaintiffs’ Motion to Dismiss All Pending Claims, Defenses and Counterclaims Relating to the ‘848 Patent Pursuant to Fed. R. Civ. P. 41(a)(2) and Exhibits B, C, D, and E filed therewith each contain highly confidential information, as defined under the Protective Order, of parties to this litigation and other third parties. While Plaintiffs are committed to the principle that this judicial proceeding, like any other, should be largely open to the public and on the public record, it is entirely appropriate for the Court to seal information relating to expressly confidential information. Public disclosure of this information may result in harm to Plaintiffs, Defendants, and/or certain third parties. The inability to file such highly confidential information under seal would make it virtually impossible to conduct an action of this nature and would serve no public purpose.

WHEREFORE, Plaintiffs move this Court to file and retain under seal (i) Memorandum of Law in Support of Plaintiffs’ Motion to Dismiss All Pending Claims,

Defenses and Counterclaims Relating to the '848 Patent Pursuant to Fed. R. Civ. P.

41(a)(2); and (ii) Exhibits B, C, D, and E filed therewith.

Respectfully submitted this 17th day of June, 2011.

/s/ Robert T. Numbers II

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants: Daniel Alan M. Ruley, aruley@belldavispiitt.com, William K. Davis, wdavis@belldavispiitt.com, Christopher G. Kelly, christopher.kelly@hklaw.com, Steven L. D'Alessandro, steven.dalessandro@hklaw.com, Robert J. Burns, robert.burns@hklaw.com, Joshua C. Krumholz, Joshua.krumholz@hklaw.com, Jitendra Malik, jmalik@alston.com, John Patrick Elsevier, jpelsevier@jonesday.com, Matthew W. Howell, matthew.howell@alston.com, Judy C. Jarecki-Black, jduy.jarecki@merial.com, and Frank G. Smith, frank.smith@alson.com.

This the 17th day of June, 2011.

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